Ayob bin Saud v TS Sambanthamurthi

HIGH COURT (PENANG) – CIVIL SUIT NO 274 OF 1979
MOHAMED DZAIDDIN J
20 SEPTEMBER 1988

Tort – Defamation – Libel – Dispute on professional fees charged by plaintiff – Whether defendant's letter to third party constituted libel – Whether 'daylight robbery' and alleged innuendo bore a meaning defamatory of plaintiff

The plaintiff was a land surveyor who was appointed by the defendant to carry out certain survey work on the defendant's piece of property. After the completion of his assignment, the plaintiff submitted his bill for the professional services rendered. Subsequently, the plaintiff received a copy of a letter written by the defendant to one C containing the following paragraph: 'I am surprised that a Chinese surveyor has charged $1,450 whereas a Bumiputra asks for $4,480 which is daylight robbery ...'

On the basis of the above letter, the plaintiff sued the defendant for damages for libel. In his statement of claim, the plaintiff averred, inter alia, that the paragraph complained of, in its natural and ordinary meaning, meant and was understood to mean that the plaintiff was a dishonest person, that he acted in a manner unbecoming of a licensed land surveyor and that he failed to have regard to the proper fees chargeable for the simple work undertaken and that he could be compared to and equated with robbers.

Held, dismissing the claim:

(1) The law of libel is governed by the Defamation Act 1957 and the burden of proof lies on the plaintiff to show: (a) the words are defamatory; (b) the words refer to the plaintiff; and (c) the words were published.

(2) It is plain and obvious that the words in the letter were written about the plaintiff. Upon the evidence, the court was also satisfied that there was sufficient publication to a third person, as the letter was opened and read by the plaintiff's clerk in the course of her secretarial duties and as the letter was also sent to the defendant's agent.

(3) However, in the context of the whole paragraph (para 3 in the letter), the expression 'daylight robbery' and the alleged innuendo, ie the comparison between a Chinese and a Bumiputra surveyor, merely conveyed to all and sundry that the professional fees charged by the plaintiff were exorbitant. These words were used to emphasize the defendant's utter disgust with respect to the plaintiff's bill and they were used as words of general abuse. The paragraph complained of, in its natural and ordinary meaning, does not have the meaning ascribed to them by the plaintiff either in his pleading or in his evidence. It is not reasonably capable of bearing a meaning defamatory of the plaintiff.

[*Editorial Note*: The plaintiff has appealed to the Supreme Court vide Civil Apeal No 435 of 1988.]

Cases referred to
1 *Rajagopal* v *Rajan* [1972] 1 MLJ 45 (refd)
2 *Jones* v *Skelton* [1963] 1 WLR 1362 (refd)

Legislation referred to
Defamation Act 1957

Ghazi bin Ishak for the plaintiff.
Shahul Hamid for the defendant.

Cur Adv Vult

Mohamed Dzaiddin J: In this action, the plaintiff sued the defendant for damages for libel in a letter written by the defendant dated 28 May 1979 concerning the plaintiff in connection with certain professional duties undertaken on behalf of the defendant.

The facts of the matter are these. The plaintiff is a land surveyor by profession and has been carrying on his practice under the name and style of Syarikat Ayob bin Saud. The defendant, on the other hand, is a lawyer and a retired senior legal officer, formerly attached to the Attorney General's Chambers, Kuala Lumpur. In so far as this case was concerned, the defendant is a registered proprietor of a piece of land known as Lot 1899, Mukim Sidam Kanan, Kulim, Kedah ('the said land'). Sometime in 1978, the defendant was interested to develop the said land and appointed Koperasi Nesa Pelbagai Bhd as the developer. It is quite correct to assume that as he was too preoccupied with his professional duties, he appointed one Perianayagam, his old schoolmate, to be his agent in supervising the project. The development of the said land required some sub-divisional survey work to be undertaken by a surveyor. The plaintiff was then appointed by the defendant to carry out the survey work. After the completion of his assignment, the plaintiff submitted his bill dated 23 May 1979 for professional services rendered to Koperasi Nesa for payment, with a copy sent to the defendant. There seemed to be some dispute regarding the professional fees charged by the plaintiff.

Hence, on or about 28 May 1979 the plaintiff received a copy of a letter written by the defendant to one C Thanabalasingam, the secretary of Koperasi Nesa. The letter (exh P5) reads as follows:

TS Sambanthamurthi,
GM, MBIM, AMN
Gray's Inn
Barrister-at-Law

3496, Lower Ampang
Kuala Lumpur

Mr C Thanabalasingam
Koperasi Nesa
MIC Building
1, Jalan Rahmat
Kuala Lumpur

Dear Sir,

Re: Lot 1899, Mukim Sidam Kanan, Kulim.

I refer to bill no 98/79 dated 23 May 1979 from Syarikat Ayob bin Saud. Please do not make any payment on this bill. This work was done by the owners of the neighbouring lot and was discussed at the Majlis Daerah Kerajaan Tempatan meeting at Kulim on 22 April 1979 where I had to agree to share the cost of preparation of the Benchmark plan – minutes attached.

Syarikat Ayob bin Saud have been told of this even before they started work to prepare the plan.

I am surprised that a Chinese surveyor has charged $1,450 whereas a Bumiputra asks for $4,480 which is daylight robbery. Besides I never gave directions to Syarikat Ayob bin Saud to prepare the plans.

Yours faithfully

cc
Syarikat Ayob bin Saud
Bilik 106, Tingkat Pertama
Bangunan Malayan Bank
9, Lebuh Union, Penang

Mr S Perianayagam
Kulim, Kedah

Thus, on the basis of the above letter and in particular, the third paragraph, the plaintiff alleged that he had been libelled by the defendant and claimed damages. The material paragraphs of the plaintiff's statement of claim alleging defamation are as follows:

6 On or about 28 May 1979 the defendant falsely and maliciously wrote, signed and published or caused to be written and published of and concerning the plaintiff and of him in the way of his said profession or occupation and in relation to his conduct therein, in the form of a typewritten letter addressed to the said C Thanabalasingam, the words following that is to say:

'I am surprised that a Chinese surveyor has charged $1,450 whereas a Bumiputra asks for $4,480 which is daylight robbery ...'

7 The said letter was dictated by the defendant to a clerk whose name is at present unknown to the plaintiff, and after being transcribed by the said clerk by a typewriting machine was signed by the defendant and sent to the said C Thanabalasingam and a copy was sent by post in an envelope addressed to the plaintiff's firm and a further copy was also sent to the said S Perianayagam. The said letter was therefore not only opened and read in the ordinary course of business by Puan Ooi Ah Moy, a clerk employed by the plaintiff, but was also read by the said C Thanabalasingam and the said S Perianayagam.

8 The said words in their natural and ordinary meaning meant and were understood to mean:

(a) that the plaintiff was a dishonest person who claimed money from the Koperasi Nesa to which he was not entitled;
(b) that the plaintiff had been guilty of dishonest and dishonourable conduct;
(c) that the plaintiff acted in a manner unbecoming of a licensed land surveyor;
(d) that the plaintiff acted in an unprofessional or undisciplined or unprincipled manner;
(e) that the plaintiff did not know or did not have regard to the proper fees chargeable in respect of the work done by the plaintiff for the defendant and/or Koperasi Nesa;
(f) that the plaintiff could be compared to and equated with robbers.

9 Further or in the alternative the said words meant and were understood to mean that in charging fees of $4,480 the plaintiff relied on his status as a Bumiputra in charging exorbitant fees without due regard to the standards and fees set by the Institute of Surveyors, Malaysia:

Particulars pursuant to the Rules of the High Court O 19 r 6

In referring (1) to the plaintiff as a 'Bumiputra' and comparing him to a 'Chinese surveyor'; (2) to the difference in fees charged by surveyors of different races, and (3) to the fees charged as 'daylight robbery'.

10 By reason of the premises the plaintiff had been greatly injured in his credit, character and reputation and in the way of his said profession or occupation and has been brought into hatred, ridicule and contempt.

The defendant, in his amended defence, denied the plaintiff's claim and in particular he denied that he wrote the said letter, exh P5, falsely and maliciously. Further he denied that the words set out in para 6 of the statement of claim bore or were understood to bear any meaning alleged in para 8 therein. It is the defendant's case that the publication of P5 was on an occasion of qualified privilege as per particulars in para 10 of the amended defence. The plaintiff then filed his reply to the amended defence whereby he pleaded in para 5 of the reply that the defendant was actuated by express malice when publishing those words as set out in para 6 of the statement of claim.

The law

At the outset, I must state that my task in considering the law on defamation in this case has been made easier by an article on 'The Law of Defamation in Malaysia and Singapore' by M/s Rasamalar Poopalasingam and Stanley Jeremiah in [1988] 1 MLJ cvi.

In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the plaintiff to show (1) the words are defamatory; (2) the words refer to the plaintiff; and (3) the words were published. Where a defence of qualified privilege is set up, as in the present case, the burden lies on the defendant to prove that he made the statement honestly, and without any indirect or improper motive. Then, if he succeeds in establishing qualified privilege, the burden is shifted to the plaintiff in this case to show actual or express malice which upon proof thereof, communication made under qualified privilege could no longer be regarded as privileged: *Rajagopal* v *Rajan*.[1]

I shall now deal with the evidence in the following sequence. First, did the words in para 3 of exh P5 (also pleaded in para 6 of the statement of claim) refer to the plaintiff? It is plain and obvious that they were written about the plaintiff. Secondly, was there publication of the libel? In law, to constitute publication, the defamatory matter must be published to a third person other than the plaintiff. In other words, it is the making known of the defamatory matter, after it has been written, to some person other than the person to whom it is written.

In the present case, the publication of the defamatory matter is pleaded under para 7 of the statement of claim. In support of the said averment, the plaintiff called Miss Ooi Ah Moi (PW2) to testify that at the material time she was employed by the plaintiff in his firm as a general clerk. Her duties included the opening of files and correspondences received by the firm. When shown exh P5, she stated that she remembered opening it. She read its contents, searched for the connecting file and passed it for the plaintiff's attention. Under cross-examination, she stated that she also carried out secretarial duties for the plaintiff. She received an average of ten letters per day and normally opened these letters and read their contents. The letter P5 together with the file was given to the plaintiff personally. In addition exh P5 was also sent to Perianayagam, who was the defendant's agent. Upon these evidence, I am satisfied and I hold that there is sufficient publication to a third person.

The third consideration, which is the crux of the whole case is whether the words published are defamatory. 'To be defamatory the imputation need have no actual effect on the person's reputation; the law looks only to its tendency': *Gatley on Libel and Slander*, 6th Ed, p 14, para 31. On this issue, the first point to consider is whether the words complained of in their natural and ordinary meaning are defamatory of the plaintiff. The Judicial Committee of the Privy Council in *Jones* v *Skelton*[2] stated the law as follows:

> It is well settled that the question whether words which are complained of are capable of conveying a defamatory meaning is a question of law and is therefore one calling for decision by the court ... In deciding whether words are capable of conveying a defamatory meaning the court will reject those meanings which can only emerge as the product of some strained or forced or utterly unreasonable interpretation. In *Capital & Countries Bank* v *George Henty & Sons* (1882) 7 App Cas 741 Lord Selborne LC said: 'The test, according to the authorities is whether, under the circumstances in which the writing was published, reasonable men to whom the publication was made, would be likely to understand it in a libellous sense.' The ordinary and natural meaning of words may be either the literal meaning or it may be implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning capable of being detected in the language used can be part of the ordinary and natural meaning of words: see *Lewis* v *Daily Telegraph Ltd* [1963] 2 WLR 1063. The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to the jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.

In the present case, the alleged offending words are stated in para 3 in exh P5 which reads as follows:

> I am surprised that a Chinese surveyor has charged $1,450 whereas a Bumiputra asks for $4,480 which is daylight robbery ...

According to the statement of claim, it is averred that these words, in their natural and ordinary meaning, meant and were understood to mean that the plaintiff was a dishonest person, that he acted in a manner unbecoming of a licensed land surveyor and that he failed to have regard to the proper fees chargeable for the simple work undertaken and that he could be compared to and equated with robbers. Further, or in the alternative, the plaintiff averred that the comparison of the fees between a Chinese and a Bumiputra surveyor was intended to mean that the plaintiff relied on his Bumiputra status in charging exorbitant fees without regard to the scale fees provided by the Institute of Surveyors, Malaysia. The plaintiff in his brief evidence stated that the letter P5 had the effect of showing that he was a dishonest person and had acted dishonourably in discharging his professional duties. Further, he felt the comparison in the fees between a Chinese and a Bumiputra surveyor was intended to convey a bad reflection on the standard of Bumiputra surveyors as a whole.

It is common ground that the objectionable expression used in the paragraph complained of was 'daylight robbery'. According to *Longman Dictionary of English Idioms*, 'daylight robbery' is an English colloquialism meaning 'a price or charge made that is so high that the customer might almost think that he is being robbed of his money'. Thus, in the context of the whole paragraph, in my opinion, both the expression 'daylight robbery' and the alleged innuendo, ie the comparison between a Chinese and a Bumiputra surveyor, merely conveyed to all and sundry that the professional fees charged by the plaintiff were exorbitant. These words were used to emphasize the defendant's utter disgust with respect to the plaintiff's bill and they were used as words of general abuse. In my judgment, the paragraph complained of in exh P5, in their natural and ordinary meaning, do not have the meaning ascribed to them by the plaintiff either in his pleading or in his evidence. They are not reasonably capable of bearing a meaning defamatory of the plaintiff.

In the circumstances of the whole case, and for the above reasons, I find the plaintiff has failed to prove that the words complained of are defamatory of him. Accordingly, the plaintiff's action is dismissed with costs.

Application dismissed.

Solicitors: *Presgrave & Matthews*; *Sri Ram, Zulkifly & Kumar.*

Reported by *Ng Sheau Jiuan*